

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:05CR256**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
BOYD CHARLES SMITH,)	
)	
Defendant.)	
_____)	

THIS CAUSE coming on to be heard before the undersigned, Dennis L. Howell, United States Magistrate Judge for the Western District of North Carolina, upon oral motion made by the defendant that the court reconsider this matter as to the issue of whether or not the defendant should be released on terms and conditions of pretrial release. The undersigned having heard the evidence presented by the defendant and by the government makes the following findings and enters the following order:

Findings: On November 8, 2005 the undersigned entered an order detaining the defendant. This order was filed in writing on November 14, 2005 and is incorporated herein by reference as if fully set forth. In the order, the undersigned set forth the factors considered by the court as provided by 18 U.S.C. § 3142. In the order, however, the defendant requested an opportunity to be further heard in regard to the order of detention.

At the call of this matter on for hearing the defendant presented evidence through two witnesses, that being Sandy Long and Phillip Ruff. Ms. Long is the sister of the defendant. She resides in the Kings Mountain community and has worked as a mortgage broker in Charlotte, North Carolina for a period of eight years. Ms. Long is married and has two children ages 8 and 18.

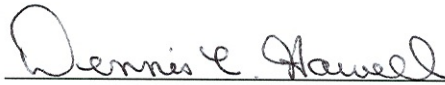
Neither she nor her husband have any criminal record. Ms. Long testified that she would be happy to act as a third party custodian to supervise any pretrial release that might be made of the defendant even to the extent that she would allow the defendant to reside in her home with her family. The court finds that Ms. Long would be a fit and suitable person to be a custodian of the defendant upon terms and conditions of pretrial release. Phillip Ruff testified that he operated a landscaping business in the Kings Mountain community. The defendant had been employed by Mr. Ruff in this business. Mr. Ruff described the defendant as one of his best workers. He further described the defendant as a "fix-it man" who could fix almost any machine that was broken. There was further presented to the court by way of tender the defendant's son who is a private in the United States Marine Corps. It was represented that the defendant's son was on leave from his service to his country and was scheduled to leave after the Christmas holidays to serve a tour of duty in Iraq. The defendant's mother was also present. She is a nurse in a nursing facility in Cherryville, N.C.

Discussion. The undersigned incorporates herein the Addendum to Detention Order filed on November 14, 2005. In the Addendum, the undersigned considered the various factors as set forth under 18 U.S.C. § 3142(g) that the court is to weigh, in determining whether or not to release a defendant on terms and conditions of pretrial release. The undersigned has given serious consideration to releasing the defendant on terms and conditions of pretrial release if the undersigned released him to the custody of Ms. Long. However, the court has given great weight to the criminal record of the defendant. This defendant has been convicted of five separate and individual felony drug offenses since 1995. He has further been convicted of three misdemeanor drug offenses from and after 1995. He has been convicted three times of driving while impaired and eight times of driving while license revoked. The court has further considered and given great weight to the

recommendation of the United States Probation Office which recommends that there are no conditions or combination of conditions that would reasonably assure the appearance of the defendant or the safety of the community. After weighing all of the evidence, the court agrees with that recommendation. To release the defendant from detention would create a danger to the community. The previous convictions of the defendant had not caused the defendant to cease his criminal activities. Although the defendant's sister would be an excellent custodian for the defendant she cannot watch the defendant 24 hours per day. Considering all the factors and reviewing this matter again the undersigned has determined to continue to detain the defendant..

WHEREFORE, the motion of the defendant to be released on terms and conditions of pretrial release is hereby **DENIED**.

Signed: December 29, 2005



Dennis L. Howell
United States Magistrate Judge

